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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/599,037

05/27/2008

Rachael Perrott

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WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.

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SUITE 340

RESTON, VA 20190

EXAMINER

CHOI, FRANK I

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

12/28/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/599,037	Applicant(s) PERROTT ET AL.	
	Examiner FRANK I. CHOI	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/18/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The claimed invention is directed to a termite bait composition which can include inulin or levan, which can be derived from grasses or Jerusalem artichoke and a method of attracting termites with or bait station containing said termite bait composition.

Claims 1-28,35-38 are rejected 35 U.S.C. 102(b) as being as being anticipated by Hennart (US 4,189,475).

Hennart expressly discloses a insecticide bait composition containing wheat flour (Column 7, examples 25,32).

It is inherent that wheat flour is ground grass and contains inulins, fructans and levans (See Catani et al. (US 5,998,177), column 1, lines 28-42; Scheibl (US 4,724,136), column 1, lines 34-38).

Claims 1-28,35-38 are rejected 35 U.S.C. 102(b) as being as being anticipated by Gould (US 4, 774,098).

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Gould et al. explicitly disclose a wheat flour dough in which 60%-70% by volume of the flour has been replaced by modified nonwoody, lignocellulosic substrate (Column 2, lines 33-48).

It is inherent that wheat flour is ground grass and contains inulins, fructans and levans (See Catani et al. (US 5,998,177), column 1, lines 28-42; Scheibl (US 4,724,136), column 1, lines 34-38).

Claims 1-25, 28, 29, 35-38 are rejected 35 U.S.C. 102(b) as being anticipated by Theuer et al. (US 5,840,361).

Theuer et al. explicitly disclose a puree of Jerusalem artichokes (Column 10, lines 13-51).

It is inherent that Jerusalem artichoke puree will contain inulins, fructans and levans (Theuer et al., column 11, lines 43-68, column 12, lines 1-25; See also Catani et al. (US 5,998,177), column 1, lines 28-42; Scheibl (US 4,724,136), column 1, lines 34-38).

Claims 1-28, 30-38 under 35 U.S.C. 103(a) as being obvious over Thorne et al. (US 5,555,672) in view of Prestwich (US 4,455,441), Minagawa et al. (US 5,096,710), Gould et al. (US 4,774,098) and Catani et al. (US 5,998,177).

Thorne et al. disclose a termite bait station comprising a housing and termite food which is used to control termites (Column 2, lines 1-46).

Prestwich discloses that dried grass can be used as bait for termites (Column 16, lines 35-40).

Minagawa et al. disclose that wheat flours and powders are feeding attractants for termites (column 3, lines 23-39),

Gould et al. disclose a wheat flour dough in which 60%-70% by volume of the flour has

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be replaced by modified nonwoody, lignocellulosic substrate (Column 2, lines 33-48). It is disclosed that wheat are grasses (Column 3, lines 23-46).

Catani et al. disclose that plants, such as wheat, contain fructans, such as inulins, a 2,1 linked fructan, and levans (Column 1, lines 28-42).

Thorne et al. disclose a termite bait station comprising a housing and termite food which is used to control termites. The difference between Thorne et al. and the claimed invention is that Thorne et al. does not expressly disclose a method of attracting termites comprising at least one beta-2,1 linked carbohydrate which is smaller than cellulose and a bait station comprising the same in a housing with at least one opening through which termites may travel to reach the composition. However, the prior art amply suggests the same as the prior art discloses a bait station for control of termites containing a bait (Thorne et al.), that dried grass is a bait (Prestwich), that wheat is a grass (Gould et al.), that wheat flour or wheat powder is an feed attractant for termites (Minagawa et al.), and wheat contains fructans, such as inulins, a 2,1 linked fructan and levans (Catani et al.) and a composition containing wheat flour and a modified lignocellulosic substrate (Gould et al.). As such, it would have been well within the skill of and one of ordinary skill in the art would have been motivated to modify the prior art as above with the expectation that the composition containing wheat flour and modified cellulosic substrate would be a feeding attractant for termites and that the same would contain fructans, including inulin, a 2,1 linked fructan and levans.

Conclusion

A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is 571-273-8300.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (571)272-0610. Examiner maintains a compressed schedule and may be reached Monday, Tuesday, Wednesday and Thursday, 6:00 am – 4:30 pm (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Johann R. Richter, can be reached at (571)272-0646. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frank Choi
Patent Examiner
Technology Center 1600
December 28, 2009

/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616